



OCPF Online
www.state.ma.us/ocpf
Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

April 21, 2000
AO-00-05

Michael D. Yacino, Executive Director
Gun Owners' Action League
37 Pierce Street, P.O. Box 567
Northboro, MA 01532-0567

Re: Independent expenditures by issues advocacy organization and political action committee

Dear Mr. Yacino:

This letter is in response to your request for an opinion regarding political expenditures by the Gun Owners' Action League (GOAL) and the Gun Owners' Political Action Committee (GO-PAC), your affiliated Massachusetts political action committee

You have stated that the vast majority of GOAL's income is derived from individual member dues, although the organization also receives donations from corporations. GOAL issues a monthly newsletter, *The Message*, which GOAL distributes to members and affiliated organizations. To become a member of GOAL, a person must complete an application and pay dues of \$25 per year. Only individual members may elect board members. Although not "members" of GOAL, there are a number of corporations or other organizations that contribute to the association. *The Message* is also the official news publication for a number of affiliated sportsmen's clubs, some of which may be incorporated. Each affiliated club receives one copy of *The Message*. In addition, copies may occasionally be given to interested persons at trade shows, or a gun shop may ask for extra copies to be given to interested persons.

You have asked several questions, each of which is answered below, regarding the extent to which GOAL and GO-PAC may make independent expenditures or take other action to support candidates.

Question 1: May GOAL endorse candidates and publicize the endorsements in its regularly published newsletter, *The Message*, and by issuing a press release?

Answer: Yes. GOAL may publicize the endorsements in regularly published editions of *The Message*, to be distributed to members and their families, and to affiliated organizations. Consistent with GOAL's customary practices, GOAL may also issue a press release to publicize the endorsements. However, a "special edition" of the newsletter, i.e., an edition which to accommodate endorsements is made larger and more costly to produce, may not be distributed by GOAL beyond the scope of GOAL's membership and may not be distributed to affiliated organizations.

Your questions require a consideration of the relationship between two sections of the campaign finance law – sections 1 and 8. Section 1 states that "communications from a membership organization, not including a corporation subject to section eight, to its members and their families¹ on any subject shall not be deemed to be a contribution or expenditure." See M.G.L. c. 55, § 1. As a membership organization, therefore, costs associated with communicating with GOAL's members generally are not considered "contributions" or "expenditures" and are not subject to the limits or the reporting requirements of the campaign finance law.² For example, no reportable "contribution" or "expenditure" takes place when GOAL distributes a regularly published newsletter to members that endorses candidates.

Section 8 states that a business corporation may not "directly or indirectly give, pay, expend or contribute . . . any money or other valuable thing for the purposes of aiding, promoting or preventing the nomination or election of any person to public office . . ." See Op. Atty. Gen., November 6, 1980 (stating that "[I]f a corporation cannot directly provide facilities to a candidate or committee by virtue of the statute, it may not do so indirectly through the associations to which it belongs").

The prohibition against such corporate contributions extends to non-profit corporations and other organizations whose dues-paying members are, or which receive funds from, business corporations. See AO-98-01, AO-98-18 and FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986) ("MCFL"). In MCFL, the Supreme Court concluded that a federal law prohibiting corporate contributions to candidates could not be applied to MCFL. The court held that as applied to MCFL the statute would violate First Amendment guaranties of freedom of speech because MCFL was (a) expressly created to promote political ideas and not engaged in business activities, (b) had no shareholders with a claim on the corporation's assets and (c) *was not established by and did not accept contributions from business corporations*. The court stated that a "policy not to accept contributions from [business corporations] . . . prevents such corporations from serving as conduits for the type of direct spending that creates a threat to the political marketplace." 479 U.S. at 264. In addition, the court stressed that these three factors were "essential" to its holding and acknowledged that the "class of organizations affected by our holding today will be small." 479 U.S. at 263-264.

¹ Although GOAL receives some corporate donations, I understand that no member of GOAL is a business or professional corporation. The office has advised that an organization which "is comprised solely of individuals (as distinguished from entities such as trusts, corporations, PCs and partnerships) as members would be a 'membership organization.' Any [organization] which has entities such as trusts, corporations, PCs or partnerships as members is not a 'membership organization.'" See AO-97-15.

² If the newsletter contains a solicitation for political contributions to be received and used by GOAL, the organization would be operating as a political committee. See AO-98-21. The solicitation and receipt of political contributions is the function of political committees, not membership organizations. By definition, political committees such as GO-PAC may not be membership organizations. See 970 CMR 2.02.

Consistent with MCFL and the 1980 Attorney General opinion cited above, the office has consistently interpreted section 8 as strictly prohibiting such organizations from directly *or indirectly* contributing to candidates. See, e.g., AO-98-18, in which the office concluded that an organization receiving corporate money could not provide administrative support to a PAC even if the organization segregated corporate funds from other funds. Allowing an organization to make contributions to candidates by using non-corporate funds that have been segregated from corporate funds would allow business and professional corporations to make prohibited indirect contributions to candidates. In essence, the segregation of corporate funds would have the effect of “freeing up” the non-corporate funds to make such contributions to candidates. In contrast to MCFL, GOAL does not have a policy barring the receipt of funds from business corporations and receives a small amount of its total funds from corporations.

In applying the campaign finance law to your question, we must balance the competing interests reflected in sections 1 and 8. Although section 8 by its terms prohibits direct or indirect corporate expenditures made to influence candidate elections, the Supreme Judicial Court has observed that because of the strict standard for interpreting First Amendment issues, section 8 should not be read to bar a corporation from conducting normal organizational activities such as the support of candidates in a regularly published newspaper. See First National Bank of Boston v. Attorney General, 371 Mass. 773, 359 N.E. 2d 1262, 1272 (1977), reversed on other grounds, 435 U.S. 765 (1978). The same observation may be applicable to the publication of a newsletter for members by an issues advocacy organization. Therefore, the cost of sending GOAL’s regularly published newsletter to members and affiliated organizations is not an expenditure or contribution subject to section 8, even if the newsletter contains endorsements and GOAL uses its funds to distribute the newsletter.

In conclusion, GOAL may include endorsements in its regularly published newsletter and distribute the newsletter to members and affiliated organizations. GOAL may not, however, publish and distribute a special edition of its newsletter containing endorsements *beyond its membership* – because the organization receives some of its funds from business corporations.

Similarly, GOAL may issue a press release *only* if it customarily issues press releases to announce the organization’s decisions. In addition, the cost of distributing the press release should be similar to the cost incurred when other press releases are issued by GOAL.

Question 2: May GOAL publish a voter guide, i.e., a separate pull-out section of *The Message* that would involve additional costs not regularly incurred in publishing the newsletter, for its members?

Answer: Yes. GOAL may not, however, distribute the voter guide outside of the scope of its membership.

Question 3: May GOAL’s voter guide be published as a part of GOAL’s regularly published newsletter?

Answer: Yes. However, if the guide involves additional costs, it may not be distributed outside the scope of GOAL’s membership. If the voter guide does not involve additional cost (i.e., the length of the newsletter is not increased beyond the 36 pages normally used), the newsletter may be distributed, as it regularly is, beyond the organization’s membership.

Question 4: May GOAL run campaign schools?

Answer: No. The office has advised that an issues advocacy organization may run a campaign school without having to register as a political committee, if the school is open to all candidates. See AO-97-23. In that opinion, however, the office did not consider whether an organization could use funds received from a business or professional corporation to fund such a school.

As discussed above, the campaign finance law prohibits the use of corporate money to directly or indirectly promote or oppose the election of a candidate or the interest of a political party. Because GOAL receives some of its funds from corporations, it may not make expenditures for the purpose of supporting or opposing certain candidates, and it may not make expenditures, other than to communicate with membership, which would have that effect. An organization may therefore run a campaign school for candidates if the purpose and effect of the school is to provide training to *all* candidates. We assume that if GOAL runs a campaign school, however, the purpose and effect would be to benefit those candidates that are supported by the organization. Therefore, the organization should not run a campaign school.

Question 5: Are there any limits to the amount that GO-PAC may spend on an independent campaign for candidates?

Answer: No. GO-PAC may make independent expenditures to support or oppose candidates in unlimited amounts provided that the expenditures “enhance the principle for which the committee was organized.” See M.G.L. c. 55, § 6.

As discussed above, because business and professional corporations provide funds to GOAL, the organization may not, without violating section 8, make “expenditures” to support or oppose candidates. The prohibition extends to non-profit corporations and other organizations whose dues-paying members are business corporations or which receive funds from business corporations. See AO-98-01, MCFL and Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990) in which the Supreme Court upheld the application of a Michigan statute similar to section 8 that prohibited independent expenditures by an organization funded by corporations.

In contrast, however, because political action committees are prohibited by section 8 from receiving corporate contributions, PACs such as GO-PAC may make expenditures directly or independently to support or oppose candidates.

Expenditures made to influence the nomination or election of a candidate or candidates that are made “without cooperation or consultation” with any candidate or committee, in concert with, or at the request or suggestion of a candidate or committee, are “independent expenditures.” See M.G.L. c. 55, § 18A. PACs must report such independent expenditures on regularly filed reports and must identify candidates receiving the benefit of such expenditures. See M.G.L. c. 55, § 18.

Question 6: May GOAL urge members to make contributions to candidates, the total sum of which would certainly exceed \$500?

Michael D. Yacino

April 21, 1999

Page 5

Answer: Yes. The request should indicate, however, that contributions should be submitted to candidates, not to GOAL. See AO-98-01 and AO-98-21 (stating that membership communication may solicit contributions on behalf of a political committee, but if the contributions are made payable to the membership organization and deposited prior to transferring funds to the candidate, the organization itself would be operating as a political committee).

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter and in your conversations with OCPF staff as set forth herein. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director